

II. Claims 54 and 55, drawn to a method of preparing a composition and composition produced thereby, classified in class 427, subclass 2.21.

Applicants respectfully provisionally elect the invention set forth in Group I above, with traverse. Applicants respectfully submit that it would impose no greater burden upon the Patent Office to search and examine the claims of both groups than to search and examine the groups in one patent application. Applicants therefore respectfully request reconsideration of the restriction requirement.

The Office Action of March 29, 2001 also required applicants to elect a single disclosed species for prosecution on the merits to which the claims would be restricted if no generic claim is finally held to be allowable, as well as an ultimate working example that corresponds to the election. The Office Action further required applicants to elect an ultimate working example that corresponds to the elections and to list the claims readable thereon as well as the claims that do not read thereon.

Applicants respectfully traverse this requirement in that it is unclear as to what it requires: the single ultimate disclosed species of each specific element of the claims or a specific species of the composition in total. Applicants also respectfully note that the working examples should not serve to limit the scope of the invention and that they may not necessarily exemplify each and every single ultimate disclosed species of each element of the claims. Notwithstanding, applicants attempt provisionally to comply with this requirement as follows.

As to (a), the single ultimate disclosed species of a first active, applicants provisionally elect metronidazole (corresponding to claims 1, 9, 10, and 12); as to (b) one single ultimate disclosed species of a second active, applicants provisionally elect metronidazole (corresponding to claims 1, 37, 38 and 40); as to (c) one single ultimate disclosed species of a water soluble polymer, applicants provisionally elect hydroxypropylmethylcellulose (corresponding to claims 1, 2, 6, 13, 14, 15, and 18); as to (d) one single ultimate disclosed species of fatty acid, applicants provisionally elect hydrogenated vegetable oil (corresponding to claims 1, 7, 16, and 18); and as to (e) one single ultimate disclosed species of matrix forming agent, applicants provisionally elect the combination of gelatin, polyacrylic acid polymers crosslinked with polyalkenyl polyethers and amino acid (corresponding to claims 1, 27, 28, 33, 34, 35, 36, 43, 44, and 48).

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gelatin +
xanthan
per: Andrea Colby
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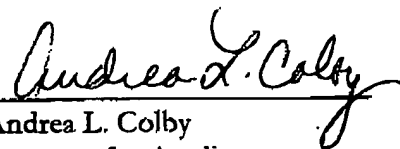
941
Carbopol 434
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Applicants respectfully provisionally elect working example 13, which corresponds to claims 1, 2, 6, 9, 10, 12, 13, 19, 20, 21, 23, 24, 25, 27, 28, 29, 31, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 45, 46, 50, 51, 52 and 53. Claims which do not appear to correspond to any of the foregoing provisionally-elected species are as follows: claims 3, 4, 5, 7, 8, 16, 17, 18, 22, 26, 30, 32, 39, and 47.

The Office Action also pointed out that claims 22 and 49 are generic to a plurality of disclosed patentably distinct species and required applicants to elect a single disclosed ultimate species. Applicants respectfully submit that the listed species including a preservative, a flavorant, an antioxidant, a surfactant, a sweetener, a viscosity enhancer, a colorant, a fragrance, a plasticizer, a lubricant, a filler, a binder, a wetting agent, a penetration agent, a pH adjuster, a disintegrant, and an excipient are additions to the claimed compositions of the invention that are generally made by those of ordinary skill in the art and that they do not in and of themselves lend patentability to the compositions of the invention. Therefore, applicants respectfully traverse this requirement.

Applicants respectfully submit that the foregoing responds to the requirements set forth in the Office Action of March 29, 2001. The examiner is respectfully requested to contact the undersigned in the event that there are any questions regarding the foregoing. Applicants respectfully request consideration of the claims. An early allowance is earnestly solicited.

Respectfully submitted,


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May 29, 2001

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